85-1358 (1)

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

WILLIAM L. LUKHARD, COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES

Petitioner,

v.

ONA MAE REED, SALLIE LONG, RUTH WILCHER, OPAL MAE COOK, STELLA KING, AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MARY SUE TERRY
Attorney General
of Virginia

R. CLAIRE GUTHRIE
Deputy Attorney
General

JOHN A. RUPP
Senior Assistant
Attorney General

THOMAS J. CZELUSTA
Assistant Attorney
General

Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-1021

132pp

QUESTION PRESENTED

1. Whether, under the Social Security Act, a State can require a recipient of an Aid to Families with Dependent Children (AFDC) grant who receives a lump sum personal injury award to use such funds to meet future living expenses in lieu of allowing such recipient to spend the funds to regain AFDC eligibility?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

NO. _____

WILLIAM L. LUKHARD, COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES,

Petitioner,

v.

ONA MAE REED, SALLIE LONG, RUTH WILCHER, OPAL MAE COOK, STELLA KING, AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

William L. Lukhard, Commissioner of the Virginia Department of Social Services, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this matter.[1]

I.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is reported at 774 F.2d 1270 (4th Cir. 1985) and is included in Appendix A at App. 1.

The Order of the court of appeals denying petitioner's motion for rehearing with a suggestion for rehearing en banc is set forth in Appendix C at App. 55.

The Order of the court of appeals staying its mandate is set forth in Appendix C at App. 58.

The Order of the court of appeals denying respondents' motion to vacate or modify the stay of mandate is set forth in Appendix C at App. 61.

The Opinion and Order of the United States District Court for the Western District of Virginia, Roanoke Division, is reported at 591 F. Supp. 1247 (W.D. Va. 1984), and is included in Appendix B at App. 23.

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[1]The parties in the proceedings below included plaintiffs Ona Mae Reed, Sallie Long, Ruth Wilcher, Opal Mae Cook, Stella King, and all others similarly situated; William L. Lukhard, Commissioner, Virginia Department of Social Services; and the Secretary of the United States Department of Health and Human Services.

The Final Order of the district court, issued on October 3, 1984, is set forth in Appendix B at App. 53.

II.

JURISDICTION

The judgment of the court of appeals was entered on October 10, 1985. Petitioners filed a petition for rehearing with a suggestion for an en banc rehearing on October 31, 1985, which the court of appeals denied on November 14, 1985. The court of appeals stayed the mandate on November 21, 1985, upon motion of the petitioner, pending application to this Court for a writ of certiorari. The jurisdiction of this Court to issue a writ of certiorari in this case is based on 28 U.S.C. § 1254(1).

III.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The provisions of law involved in this case are too lengthy to be set out verbatim here. They are, however, set out verbatim in Appendix D. Those provisions of law are:

1. 42 U.S.C. § 602(a)(17) (App. 63)
2. 42 U.S.C. § 602(a)(17) (amended 1984) (App. 64)
3. 45 C.F.R. § 233.10(a)(1) (App. 66)

4. 45 C.F.R. § 233.20(a)(3)(ii)(D) (App. 68) (current version at 45 C.F.R. § 233.20(a)(3)(ii)(F) (App. 69)

5. Virginia Department of Social Services Aid to Dependent Children Manual, § 305.4(C) (App. 71)

6. Virginia Department of Social Services Aid to Dependent Children Manual § 305.4(C) (amended 1985) (App. 78)

IV.

STATEMENT OF THE CASE

The central issue presented in this petition concerns the treatment of the receipt of a nonrecurring lump sum of money by a recipient of an Aid to Families with Dependent Children (AFDC) grant.[2]

Congress amended the statutory provision primarily at issue in this case, 42 U.S.C. § 602(a)(17),[3] in 1981 as a part of

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[2]The AFDC program is codified at 42 U.S.C. §§ 601-615.

[3]Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub.L. No. 97-35, § 2304, 95 Stat. 357, 845.

an extensive attempt to cut the federal budget. This amendment created what is known as the "lump sum rule," which provides for a period of prospective ineligibility for AFDC benefits where a member of the AFDC family has received a lump sum payment. In essence, the lump sum becomes the family's AFDC grant for a prescribed period. The period of ineligibility is determined by dividing the total of a family's lump sum and other income by the family's monthly standard of need. The resulting quotient represents the number of months of disqualification.[4]

The 1981 amendment required that the "lump sum rule" be incorporated by states into their AFDC plans. In response to this requirement, Virginia adopted § 305.4(C) of the Department of Social Services' Aid to Dependent Children Manual ("the Manual") (App. 71). This regulation requires the

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[4]Prior to OBRA, a lump sum payment was regarded as income only in the month received; thereafter, to the extent that any was left, it was considered a resource. As income in the month of receipt, it would disqualify the AFDC recipient from eligibility for that month; treated as a resource in the following months, the lump sum would impact eligibility if retained, but if expended, the family would be eligible for AFDC benefits in the month next after the resource has been spent down to permissible legal levels.

proration of a nonrecurring lump sum received from any unearned source, including personal injury awards. Before the period of ineligibility is calculated, however, the lump sum is first reduced by associated expenses, such as medical expenses and legal fees, which were incurred prior to or within thirty days after receipt of the award. Additionally, this Manual section permits a shortening of the period of ineligibility where a life-threatening circumstance exists and the lump sum has been or will be expended for such circumstances, in accordance with the provisions of 45 C.F.R. § 233.20(a)(3)(ii)(D).[5] Virginia's application of the "lump sum rule" has been approved as being in compliance with the federal statute and implementing regulations by the U.S. Department of Health and Human Services.[6]

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[5]Approximately 231 AFDC cases in Virginia have been terminated annually in Virginia because of lump sum insurance payments. See Reed v. Lukhard, 591 F. Supp. 1247, 1251 (W.D. Va. 1984). Respondents themselves, in their Brief in Support of Motion to Restore Injunction Pending Appeal, have estimated a yearly cost to Virginia and the federal government of between $1.8 million to $3.6 million to provide AFDC benefits to the class.

[6]The U.S. Department of Health and Human Services has concluded that Congress intended all lump sum payments to be income subject to the "lump sum rule." See 49 Fed.

Respondents Reed, Long, & Wilcher, in a class action initiated on June 6, 1983, challenged Virginia's policy of counting a personal injury settlement or award as income subject to the lump sum rule rather than as a resource, alleging that such policy violated 42 U.S.C. §§ 602(a)(7), (a)(10), and (a)(17).[7] Subsequent to the initiation of this suit, Respondents Cook and King were allowed to intervene as plaintiffs, and the U. S. Department of Health and Human Services was joined as a necessary party.

Upon cross-motions for summary judgment, the district court held that personal injury awards were not income for the purposes of applying the "lump sum rule." The district court, relying upon the dictionary definition of income and the meaning of income in the context of the Internal Revenue Code, concluded that the meaning of income does not encompass compensation for personal injuries. 591 F. Supp. at

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Reg. 45558, 45561 (Nov. 16, 1984) (Notice of Proposed Rulemaking).

[7]The respondents' Complaint also challenged the application of the "lump sum rule" to AFDC recipients who were without earned income. The district court granted petitioner's Motion for Summary Judgment on that issue, and no appeal was taken. 591 F. Supp. at 1256-1257 [Appendix B at App. 37-41].

1253-1254 [Appendix B at App. 47-51]. The district court further concluded that Congress intended to limit the application of the "lump sum rule" to only those lump sum payments that met the ordinary meaning of income. Id.

Petitioner appealed the decision on the ground that personal injury recoveries were properly treated as income for purposes of applying the "lump sum rule." The court of appeals affirmed the decision of the district court. With regard to the question of whether personal injury recoveries were income for purposes of applying the "lump sum rule," the court of appeals found that, in adopting 42 U.S.C. § 602(a)(17), Congress intended to reach only payments that would ordinarily be considered income and not all large payments of money. 774 F.2d at 1273-1275 [Appendix A at App. 14-17]. The court of appeals further held that Virginia's regulation applying the "lump sum rule" to personal injury awards was arbitrary and inequitable and thus violated 45 C.F.R. § 233.10(a)(1), known as the "equitable treatment regulation." Id.

V.

JURISDICTION OF THE UNITED STATES DISTRICT COURT

The United States District Court for the Western District of Virginia, Roanoke Division, assumed jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1343. 591 F. Supp. at 1248 (App. 24).

VI.

REASONS FOR GRANTING THE WRIT

A.

THIS CASE RAISES A SUBSTANTIAL FEDERAL QUESTION WHICH THIS COURT SHOULD AGREE TO DECIDE NOW IN ORDER TO ASSURE CONSISTENCY IN THE ADMINISTRATION OF THE AFDC PROGRAM

Since the enactment of 42 U.S.C. § 602(a)(17) in 1981, numerous states have been engaged in litigation in both federal and state courts regarding the question of whether personal injury awards may be considered as income subject to the lump sum rule set forth in 42 U.S.C. § 602(a)(17).[8]

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[8] Barnes v. Cohen, 749 F.2d 1009 (3rd Cir. 1984), cert. denied __ U.S. __, 105 S.Ct. 2126 (1985) (federal question not answered, decided on state law grounds); Davis v. Coler, 601 F. Supp. 444 (N.D. Ill. 1984), appeal docketed No. 85-2481 (7th Cir. 8/29/85) ("lump sum rule" applies to payments to compensate personal injuries); Jackson v. Guissinger, 589 F.

That litigation continues unabated and has resulted in conflicting interpretations of congressional intent and purpose on a question that is important both to Congress and to the states. At issue is not only the increasingly critical problem of allocation of scarce federal and state welfare dollars, but also the important social question of whether public assistance recipients who have funds available with which to support themselves should be expected to use those funds to meet the basic needs of life or encouraged to spend the money as quickly as possible to regain AFDC eligibility. Unless this Court undertakes to review the question presented

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Supp. 1288 (W.D. La. 1984) (net proceeds of personal injury claims were properly treated as income); LaMadrid v. Hegstrom, 599 F. Supp. 1450 (D.C. Ore. 1984), appeals docketed Nos. 85-3704 and 85-3719 (9th Cir. 3/14/85) (personal injury awards not income subject to "lump sum rule"); Streahl v. Hegstrom, CV-85-1283-RE (D.C. Ore. 1985), appeals docketed Nos. 85-4426 and 85-4420 (9th Cir. 12/5/85) (life insurance settlement not subject to "lump sum rule"); Littlefield v. State Dept. of Human Services, 480 A.2d 731 (Me. 1984) (net monies received in settlement of personal injury claims constituted income); Watkins v. Blinzinger, 610 F. Supp. 1443 (S.D. Ind. 1985) appeal docketed No. 85-2366 (7th Cir. Aug. 8, 1985) (personal injury awards are income and are to be budgeted); White v. Rahm, Civ. No. C85-0071 (W.D. Wa. Feb. 8, 1985), appeal docketed No. 85-3975 (9th Cir. 7/5/85) (personal injury awards not income subject to the "lump sum rule"); Finch v. Kirk, et al., 86-90-CN-5 (E.D. N.C., filed Jan. 21, 1986).

in this petition, AFDC recipients in Maine, Louisiana, Illinois, and Indiana will be treated differently than AFDC recipients who happen to reside in Washington, Oregon, Virginia, and other states in the Fourth Circuit. The decision of the court of appeals will thus cause disparity in the administration of the AFDC program where Congress clearly intended uniformity.

The preponderance of the decisions rendered to date on the application of the "lump sum rule" run counter to the result reached by the court of appeals in this case. Moreover, the court of appeals' ruling is in clear conflict with the holding of the Supreme Judicial Court of Maine in Littlefield v. State Department of Human Services, 480 A.2d 731 (Me. 1984), and is inconsistent with the opinions of the Sixth Circuit Court of Appeals in Walker v. Adams, 741 F.2d 116 (6th Cir. 1984), and the First Circuit in Sweeney v. Murray, 732 F.2d 1022 (1st Cir. 1984).

In Littlefield, the Supreme Court of Maine examined the legislative history surrounding the 1981 OBRA amendments and held that monies received by a recipient of AFDC benefits in settlement of a personal injury claim constituted

income within the meaning of the "lump sum rule." In Sweeney, the First Circuit Court of Appeals, in order to determine whether the "lump sum rule" applied to AFDC families without earned income, made an exhaustive analysis of the Social Security Act, the OBRA amendments, and the regulations thereunder. In describing the "lump sum rule," the court stated:

> The amended rule provides that when an AFDC family receives a payment of nonrecurring lump-sum income (such as an inheritance, a personal injury judgment or settlement, or a worker's compensation award) the family becomes ineligible for AFDC for a prescribed period of time.

Sweeney v. Murray, 732 F.2d at 1024.

In Walker, the Sixth Circuit Court of Appeals addressed a case involving an AFDC recipient who had received an insurance settlement from an automobile accident. While, again, the specific question before the Court was whether the "lump sum rule" applied to AFDC recipients who had no earned income, the Court had no difficulty applying the rule against a personal injury settlement and, like the First Circuit in Sweeney, described lump sum payments as "an

inheritance, insurance settlement, or disability benefits." Walker v. Adams, 741 F.2d at 117.

The court of appeals in this case, however, examined the same legislative history relied upon by these other courts and reached the contrary conclusion that Congress intended the lump sum rule not to be applicable to proceeds from personal injury awards. The court of appeals relies almost exclusively on two sentences of the Senate Finance Committee Report for its conclusion. That Report stated:

> Under present law, any payments that meet the definition of income (e.g., retroactive social security benefits) are counted as income in the month of receipt and any of the payment that is not spent in that month is usually considered a resource in the months thereafter.
>
> The committee amendment would require that large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program.

S. Rep. No. 139, 97th Cong., 1st Session, 505, reprinted in 1981 U.S. Code Cong. & Ad. News at 702.

It is unclear why the court of appeals held that such language unmistakably reveals a congressional intention to restrict the application of the "lump sum rule" to those payments that would ordinarily be considered income. The first

sentence in the Finance Committee Report merely restates the then current law. The second sentence, which is the key sentence describing the proposed change, refers merely to "large payments." It contains no qualifications or exclusions.

Moreover, the court of appeals' reading of the intent of the statute is inconsistent with what the Administration had proposed to Congress despite the fact that nothing in the legislative history indicates that Congress rejected or altered the Administration's proposal in any way. Secretary Schweiker, in submitting the bill to Congress, testified:

> Under current law, there is no way to assure that large payments, such as lump-sum payments of insurance proceeds, or retroactive benefit payments, are considered available to meet current needs over a period of time, even though the family eligibility can be curtailed for the month of receipt. The proposal would specify that these large payments, together with other income remaining after application of the disregards, would be considered as income in the month of receipt and that the family would be ineligible for the number of months obtained by dividing all that month's countable income by the applicable standard. (Emphasis added.)

Section by Section Summary, Social Welfare Amendments of 1981, submitted to the Speaker of the House of Representatives on May 5, 1981 (App. 90).

Comparison of the two sentences in the Senate Finance Committee Report, excerpted and relied upon by the court of appeals, to the two sentences of Secretary Schweiker's statement in his section-by-section summary reveals that they are remarkably similar in both content and structure. In each statement the first sentence is a statement of the then "current" law.

The second sentence in both the Secretary's statement and the Committee's Report is a statement of what was intended to be changed. Secretary Schweiker refers to "these large payments, together with other income remaining after the application of the disregards," alluding to his examples in the first sentence of lump-sum payments of insurance proceeds or retroactive benefit payments. The Senate Finance Committee Report does not make reference to its sole example in the first sentence but merely states "large payments, together with other income remaining after the application of disregards." In rendering its decision on this issue, the court of appeals must necessarily have concluded that Congress rejected or limited the Administration's proposal. Nonetheless, a comparison of the above language

from the Senate Finance Committee and the formal statements of Secretary Schweiker reveals just the opposite. It is clear they intended the same thing.

Furthermore, the court of appeals' reading of congressional intent fails to consider this issue in the broader context of the uncontroverted Congressional purposes in enacting the OBRA amendments in general and the "lump sum rule" in particular. These purposes have been clearly articulated by the various courts that have reviewed these amendments previously:

- to reduce or eliminate welfare benefits for those considered by Congress to be less needy than those completely without resources - persons or households that have available other sources of income or resources with which to support themselves. James v. O'Bannon, 715 F.2d 794, 808 (3rd Cir. 1983); see also Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983).

- to correct the perverse effect of encouraging the family to spend such income as quickly as possible in order to retain AFDC eligibility, and to reduce welfare

benefits and restrain the growth of government spending. Littlefield v. State Department of Human Services, 480 A.2d at 739, 740.

- to promote responsible budgeting of lump-sum income by all AFDC families. Walker v. Adams, 741 F.2d at 120.

Unless this Court agrees to review the question presented in this petition, these purposes cannot be implemented evenhandedly nationwide and the existing conflict among decisions on this important question of Congressional intent and social policy will only continue with expanded disparate treatment of AFDC recipients from state to state.

B.

THE RULING BELOW CONTRAVENES ESTABLISHED STANDARDS OF REVIEW SET BY THIS COURT

In finding that petitioner's treatment of personal injury awards as income subject to the "lump sum rule" is inequitable and arbitrary and violative of 45 C.F.R. § 233.10(a)(1) (the "equitable treatment" regulation), the court of appeals overlooks established standards of review. Consequently, the decision reached by the court of appeals conflicts with prior decisions of this Court. If allowed to

stand, the court of appeals' decision will have a significant impact on the ability of state welfare executives to administer public assistance programs effectively.

The court of appeals found inequity in petitioner's application of the "lump sum rule" on two grounds. First, the court determined that, pursuant to § 305.4(C) of the ADC Manual, a personal injury award for pain and suffering was treated as income available to support an AFDC recipient's family under the "lump-sum rule," whereas a payment under a casualty policy for the loss or destruction of real or personal property was not. The court of appeals found this to be inequitable because the recipient of a payment under a casualty policy may choose not to replace the lost resource but may spend the money another way.

This application of the "lump sum rule" involves economic issues and questions of social welfare policy and does not affect freedoms guaranteed by the Bill of Rights, nor is it inherently invidious. Dandridge v. Williams, 397 U.S. 471 (1970). From a constitutional perspective then, the standard to be applied in reviewing such a rule is whether the rule advances legitimate governmental objectives in a

rational fashion. Dandridge v. Williams, Id.; Schweiker v. Wilson, 450 U.S. 221 (1981); Jefferson v. Hackney, 406 U.S. 535 (1972).

In Dandridge, this Court said:

> In the area of economics and social welfare, a state does not violate the equal protection clause merely because the classification made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality."

Dandridge v. Williams, 397 U.S. at 485.

This Court recently has restated this principle and reaffirmed that perfection in making necessary classifications is neither possible nor necessary. Schweiker v. Wilson, 450 U.S. 221 (1981). As long as the classification chosen advances a reasonable and identifiable governmental objective, courts must disregard the existence of alternative methods of classification that they might, as individuals, prefer. Id. at 234; Jefferson v. Hackney, 406 U.S. at 546.

While these cases involved the equal protection clause of the 14th Amendment rather than the "equitable treatment" regulation, 45 C.F.R. § 233.10(a)(1), the standard for review

under the regulation should be the same as the constitutional standard. In this case petitioner has advanced both legitimate governmental goals and a rational basis for the application of the "lump sum rule." As applied by Virginia, the "lump sum rule" focuses scarce public assistance funds on those who need them most, eliminates "the perverse" disincentive that encourages quick depletion of the lump sum in order to regain eligibility, and reduces spending. At the same time, the rule assures each individual the opportunity and the ability to repair or replace a loss to the extent that repair or replacement is humanly possible. Thus, for the recipient of a personal injury award, expenses related to the award are deducted; the remainder of the lump sum, representing pain and suffering or loss of earnings, is considered available to meet the family's living expenses. The possibility that someone might choose not to repair or replace damaged personal or real property for which he recovers compensation may be an imperfection, but the court of appeals' decision improperly demands mathematical equality.[9]

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[9]This Court's decision in Blum v. Bacon, 457 U.S. 132 (1982), the only case in which the "equitable treatment"

The court of appeals' second ground for its finding of arbitrariness is that the offset of expenses against the personal injury award is limited to those expenses incurred prior to and within thirty days of payment of the award, whereas a recipient who lost a tangible resource is not so limited.

Again, however, the court of appeals demands mathematical precision between individuals who find themselves in different circumstances. While it is true that an individual who has suffered a personal injury may encounter additional expenditures beyond a thirty-day period, it is impossible to predict with any degree of precision what those expenses might be. Damage to real or personal property, on the other

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regulation has been found to have been violated, provides no support for the court of appeals' decision. That case involved the State of New York's decision to exclude ADC recipients from its Emergency Assistance Program. The Secretary of HHS, in his amicus brief, took the position that New York's exclusion violated the "equal treatment" regulation. This Court, after acknowledging the strong support in the legislative history for the conclusion that ADC recipients could not be automatically excluded from the Emergency Assistance Program, deferred to the Secretary's interpretation that such section was violated. That is inapposite to the situation in the case at bar where the Secretary is in strong support of Virginia's position and finds no inequitable or arbitrary treatment.

hand, is more finite and ascertainable. To limit expenses to those incurred prior to or within thirty days of the award is a rational resolution of this difference.

Moreover, the court of appeals disregarded the changes made to the Social Security Act in July of 1984 by the Deficit Reduction Act of 1984,[10] (App. 64), which were pointed out to that court by petitioner at oral argument. This act amended 42 U.S.C. § 602(a)(17) by allowing for a reduction in the ineligibility period when an individual uses a lump-sum award to pay for medical expenses after the thirty-day period. Thus, the effect of this amendment, which Virginia has implemented, is to eliminate any disparity in treatment about which the court of appeals was concerned.[11]

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[10]Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2632(a), 98 Stat. 494, 1141.

[11]The Virginia Board of Social Services, after complying with the requirements of the State Administrative Process Act, implemented this option on September 19, 1985. (App. 78.)

VII.

CONCLUSION

For the reasons stated above, the petitioner urges this Court to grant the writ of certiorari and to reverse the judgment of the Fourth Circuit Court of Appeals.

Respectfully submitted,

WILLIAM L. LUKHARD,
COMMISSIONER
VIRGINIA DEPARTMENT OF
SOCIAL SERVICES

BY: _____
Counsel

Mary Sue Terry
Attorney General of Virginia

R. Claire Guthrie
Deputy Attorney General

John A. Rupp
Senior Assistant Attorney General

Thomas J. Czelusta*
Assistant Attorney General

101 North Eighth Street
Richmond, Virginia 23219
(804) 786-1021

*Counsel of Record

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 84-2167

Ona Mae Reed; Sallie Long;
Ruth Wilcher; Opal Mae Cook;
Stella King, and all others
similarly situated,

Appellees,

versus

Health and Human Services,

Appellant,

and

William L. Lukhard, Commissioner
of the Virginia Department of Welfare,

Defendant.

NO. 84-2168

Ona Mae Reed; Sallie Long;
Ruth Wilcher; Opal Mae Cook;
Stella King, and all others
similarly situated,

Appellees,

versus

Health and Human Services,

Appellant,

and

William L. Lukhard, Commissioner
of the Virginia Department of Welfare,

Defendant.

No. 84-2187

Ona Mae Reed; Sallie Long;
Ruth Wilcher; Opal Mae Cook;
Stella King, and all others
similarly situated,

Appellants,

versus

Department of Health and Human Services,
William L. Lukhard, Commissioner
of the Virginia Department of Welfare,

Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Chief District Judge. (C/A 83-0493-R)

Argued May 6, 1985. Decided October 10, 1985

Before WIDENER and PHILLIPS, Circuit Judges and WARD, United States District Judge for the Middle District of North Carolina, sitting by designation.

Jill Hanken (Virginia Poverty Law Center; Claire Curry; Charlottesville-Albemarle Legal Aid Society; Martin Wegbreit; Client Centered Legal Services of Southwest Virginia, Inc.; Holly Peters; Legal Aid Society of Roanoke Valley; John Saxon; Virginia Legal Aid Society on brief) for Appellants; Charlotte Hardnette, Assistant Regional Attorney; Thomas J. Czelusta, Assistant Attorney General

(Gerald L. Baliles, Attorney General; John A. Rupp, Senior Assistant Attorney General; John P. Alderman, United States Attorney; Beverly Dennis, III, Regional Attorney on brief) for Appellee.

PHILLIPS, Circuit Judge:

This case is before us on cross-appeals from an order of the district court enjoining the state defendant William Lukhard, Commissioner of the Virginia Department of Welfare, from treating compensation derived from personal injuries as income for the purposes of determining eligibility for Aid to Families with Dependent Children (AFDC) benefits but denying the class of plaintiffs an award of retroactive benefits withheld under Virginia's application of the "lump sum rule" set out in 42 U.S.C. § 602(a)(17) and 45 C.F.R. § 233.20(a)(3)(ii)(D). The Department of Health and Human Services and Lukhard appeal the injury awards are not to be considered as income under the lump sum rule. The plaintiffs cross-appeal the district court's denial of retroactive benefits, its refusal to rule on a petition for attorneys fees, and the form of notice ordered to members of the class. We affirm the order of the district court in all respects.

I

The AFDC program is a cooperative federal-state assistance program established by Congress in the Social Security Act, 49 Stat. 627, codified at 42 U.S.C. §§ 601-615.

The program is administered at the state level by agencies such as the state defendant in the case at bar. The state agency develops a plan which must be approved by the federal defendant HHS. The federal government then reimburses the state for a percentage of the benefits paid and the administrative costs incurred. One element of the plan is the establishment of eligibility for benefits based on need.

In determining an applicant's eligibility the administrative agency distinguishes between income and resources. Some resources, such as a home or an automobile may be totally or partially exempt from consideration in determining an applicant's need for benefits. See 45 C.F.R. § 233.20(a)(3)(i). Cash may be considered as a resource in some instances and may be included in the $600 maximum of non-exempt resources which are not considered in determining eligibility in Virginia. The distinction is important because all income is considered in the eligibility assessment.

Before 1981, lump sums of money from whatever source were treated as income in the month of receipt and as a resource in succeeding months. Congress changed that treatment with the passage of the "lump sum rule" as part of

the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 357 (1981), pertinent provision codified at 42 U.S.C. § 502(a)(17). The lump sum rule provides that lump sum income is to be considered in determining eligibility for a number of months calculated by dividing the amount of the lump sum income by the state's monthly standard of need. Thus, if the state's standard is $300 per month, a $15,000 payment would render the applicant ineligible for 50 months. See 45 C.F.R. § 233.20(a)(3)(ii)(D).[1]

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[1] 45 C.F.R. § 233.20(a)(3)(ii)(D) (1983) states as follows:

Net income, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of non-recurring lump sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the non-recurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes the AFDC assistance unit and any other individual whose lump sum income is counted in determining

Virginia initially implemented the rule by considering lump sums from any unearned source, including insurance settlements, as lump sum income. Joint Appendix at 143. The Virginia regulation was subsequently amended to provide that money derived from the conversion of an exempted resource into cash was not to be treated as lump sum income. Joint Appendix at 37. A later amendment broadened the regulation's scope to conversion of any real or personal property, whether an exempt resource or not, into cash. Joint Appendix 27-30, 37. Thus, a payment under a fire insurance policy covering a recipient's home or personal property would be considered a resource, rather than lump sum income, and would not affect the recipient's eligibility once the cash had dissipated below the allowable resource level. A settlement or damage award from personal injury, however, continued to be treated as lump sum income.

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the period of ineligibility. A State may shorten the period of ineligibility where it finds that a life-threatening circumstance exists, and the non-recurring income causing the period of ineligibility has been or will be expended in connection with the life-threatening circumstance. Further, until that time the non-recurring income must have been used to meet essential needs and currently the assistance unit must have no other income or resources sufficient to meet the life-threatening circumstance.

This action brought under 42 U.S.C. § 1983 and 5 U.S.C. 701, was filed by three named plaintiffs in June 1983 to challenge the treatment of personal injury awards as lump sum income.[2] The district court granted the plaintiffs a preliminary injunction prohibiting further application of the lump sum rule against them. In December 1983 two more plaintiffs were allowed to intervene, and the injunction was extended to grant them relief.

On the merits of the case, the district court granted the plaintiffs' motion for summary judgment, holding that the treatment of personal injury awards as lump sum income was unreasonable. It certified the action as a class action under Rule 23 of the Federal Rules of Civil Procedure and ordered further proceedings to determine appropriate relief. The federal defendant appealed.

After an evidentiary hearing, the district court entered a permanent injunction against treating compensation

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[2]The plaintiffs, Ona Mae Reed, Sallie Long, and Ruth Wilcher each received personal injury awards and were declared ineligible for benefits. Each alleged that her funds were spent on necessary living expenses and household items before the period of ineligibility ceased.

for personal injury as lump sum income and ordered the defendants to pay current benefits to named plaintiffs and to members of the class, but denied plaintiffs' request for retroactive payment of benefits. The district court ordered that notice of the decision be given to members of the class.[3] All relief except payment of current benefits to the named plaintiffs was stayed pending appeal, and the court made no

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[3]The court order provided in part as follows:

> Defendant Lukhard will cause individual notice to be sent by mailing to the last known address of those persons listed on the computer "snapshots" (one such "snapshot" taken in July, 1983, and one to be taken within fifteen (15) days of the entry of this order) whose benefits were denied or terminated due to personal injury awards. Said notice shall be approved by the court prior to mailing.
>
> Defendant Lukhard will cause notice of this decision to be published once a week for four (4) weeks in no fewer than four (4) regional newspapers in Virginia, one of which must be the Richmond newspaper.
>
> Defendant Lukhard will cause notice of this decision to be posted in each local office of the Virginia Department of Social Services and of the Virginia Department of Health. Said notice shall remain posted for a period of at least sixty (60) days.

Jt. App. 190-91.

ruling on plaintiffs' petition for attorneys fees and costs. These appeals followed.

II

We affirm the grant of summary judgment to the plaintiffs on the primary question whether personal injury awards are "income" for the purpose of applying the "lump sum" rule set forth in 42 U.S.C. § 602(a)(17). The facts in this case were not disputed, thus the case was before the district court on a question of law - the construction of the statute.

Neither the statute itself nor the implementing regulation defines "income." The starting point for construing the statute is therefore an examination of the ordinary meaning of the undefined term; "[w]here Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." NLRB v. Amax Coal Co., 453 U.S. 322, 329 (1981), citing Perrin v. United States, 444 U.S. 37, 42-43 (1979). Taking that as its starting point, the district court held that personal injury awards would not be considered "income" as that term is ordinarily understood. Reed

v. Lukhard, 591 F. Supp. 1247, 1256 (W.D. Va. 1984). Personal injury awards serve to make one whole, in effect restoring one to the status quo before the injury was suffered. See Lilley v. Simmons, 200 Va. 791, 108 S.E.2d 245 (1959); 22 Am. Jur. 2d, Damages § 85 (1965). Income on the other hand represents a "gain or profit," 42 C.J.S. Income (1944), and is ordinarily understood to be a return on the investment of labor or capital, thereby increasing the wealth of the recipient. See Blacks Law Dictionary 687 (5th ed. 1979); see also Eisner v. Macomber, 252 U.S. 189, 207 (1919).

The defendants argue that the district court erred in looking to contexts other than the AFDC program for a definition of income. We disagree. As we noted, the AFDC statute does not define income. While other statutes' definitions do not control our inquiry, it is instructive that Congress as well as the Department of Health and Human Services and other agencies have defined income in other contexts to exclude personal injury awards. See 26 U.S.C. § 104 (defining income for federal income tax purposes); 7 C.F.R. § 273.9(c)(8) (Department of Agriculture Food Stamp Program); 48 Fed. Reg. 7010-11 (Feb. 17, 1983) (annual

poverty guidelines promulgated by HHS). These definitions indicate the meaning that has come to be associated with income, and in light of the absence of a definition within the AFDC statute, we believe they give the best indication of the meaning intended by Congress in this context.

We do not lightly adopt an interpretation of the statute contrary to the interpretation advanced by the agency. Courts must give deference to the agency's interpretation of its own regulations; we may not reject the agency's interpretation simply because it is not the one we would reach. See Udall v. Tallman, 380 U.S. 1, 16-17 (1965); Fairfax Nursing Center v. Califano, 590 F.2d 1297, 1301 (4th Cir. 1979). Our review, however, cannot be so blind and uncritical as to become a rubberstamping of the agency's interpretation; "administrative interpretations of statutory terms are given important but not controlling significance." Batterton v. Francis, 432 U.S. 416, 424 (1977); see also Volkswagenwerk A.G. v. Federal Maritime Commission, 390 U.S. 261, 272 (1968). In this case we reject the agency's interpretation because we believe it conflicts with Congress' intent and because its disparate treatment of personal injury awards is

inequitable and thus contrary to HHS' own guidelines. See 45 C.F.R. § 233.10(a)(1).

The legislative history indicates that Congress was concerned that AFDC recipients were encouraged by the treatment of large sums of money as resources to spend the money quickly in order to remain eligible for benefits. By promulgating the lump sum rule, Congress hoped to encourage recipients to budget large sums to meet needs over a longer period of time, thereby easing the burden on the public fisc. See S. Rep. No. 97-139, 97th Cong., 1st Sess. 437, reprinted at 1981 U.S. Code Cong. & Ad. News 396, 702; Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983). However the legislative history did not indicate any intent to redefine income. The committee report states:

> Under present law, any payments that meet the definition of income (e.g., retroactive social security benefits) are counted as income in the month of receipt and any of the payment that is not spent in that month is usually considered a resource in the months thereafter.
>
> The committee amendment would require that large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program.

1981 U.S. Code Cong. & Ad. News at 702. We believe that this language unmistakably reveals Congress' intent to reach only those payments in the OBRA lump sum rule which would ordinarily be considered income, not all large payments of money. But see Walker v. Adams, 741 F.2d 116 (6th Cir. 1984). As the ordinary meaning of income does not in our view extend to personal injury awards, we find no legislative intent to extend the lump sum rule to such awards.

Nor do we believe that OBRA gave HHS the authority to allow states the option of treating personal injury awards differently than other payments for loss. Virginia treats a payment made pursuant to a casualty policy for loss of a home or a car as a resource but does not so treat a payment for loss incurred due to injury. The defendants assert that this treatment is consistent since the plaintiff may reduce the amount of the award treated as income by offsetting against it sums expended for medical care, legal fees, and other expenses caused by the injury prior to and 30 days after the money is received. Implicit in this assertion is the assumption that casualty loss payments will by necessity be used to replace the resource. We are not persuaded.

The effect of such treatment is to place a restriction on the injured recipient who cannot go into the market to replace his loss due to the nature of pain and suffering while the recipient who can go into the market to replace his lost resource, but chooses not to do so, is not so restricted. Moreover, the offset rule imports a time limitation into actual replacement of the loss due to injury that is not imposed on the replacement of other resources. Most important, this time limitation carries with it an element of arbitrariness since all the expenses due to personal injury may not accrue within the 30 days following receipt of the funds. Thus, actual replacement due to latent consequences of the injury and to permanent consequences requiring future expenditure simply falls outside the allowable offset period. This effect is inequitable and puts the injured recipient in an untenable position when compared to the recipient who has lost a more concrete and tangible resource. The AFDC program was designed to assist the needy; the state by imposing inequitable eligibility requirements thwarts that purpose and runs afoul of regulations aimed at ensuring fair and unarbitrary treatment. See 45 C.F.R. § 233.10(a)(1).

Therefore, we hold that the lump sum rule may not be applied to personal injury awards to render AFDC recipients ineligible for benefits. Accordingly, the judgment for the plaintiffs is affirmed.

III

The plaintiffs appeal the judgment of the district court denying corrective payments of benefits which the plaintiffs would have been entitled to but for the application of the lump sum rule. The district court ruled that the eleventh amendment precluded such payments, citing Pennhurst State School and Hospital v. Halderman, __ U.S. __, 104 S. Ct. 900 (1984) (Pennhurst II). We agree and affirm.

Pennhurst II reaffirmed the holding of Edelman v. Jordan, 415 U.S. 651 (1974). In Edelman, the plaintiffs sought to enjoin officials from the Illinois Department of Public Aid from administering the federal-state Aid to the Aged, Blind, or Disabled program in a manner inconsistent with federal regulations and the fourteenth amendment. The Supreme Court affirmed the injunction but held that retroactive payment of benefits was barred by the eleventh amendment. The Court stated:

> While the Court of Appeals described this retroactive award of monetary relief as a form of "equitable restitution," it is in practical effect indistinguishable in many aspects from an award of damages against the State. It will to a virtual certainty be paid from state funds, and not from the pockets of the individual state officials who were the defendants in the action. It is measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials.

Edelman, 415 U.S. at 668. The Court went on to hold that

> [t]hough a § 1983 action may be instituted by public aid recipients such as respondent, a federal court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief, and may not include a retroactive award which requires the payment of funds from the state treasury.

Id. at 677 (citations omitted).

The appellees assert that their case differs from Edelman, despite the almost identical fact pattern, in that Congress has since enacted 42 U.S.C. § 602(a)(22) which reqires that a state AFDC plan must provide that "the state agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan." Underpayment is defined as "a financial assistance payment ... which is less than the amount for which the assistance unit

was eligible, or failure by the State to issue a financial assistance payment for the payment month to an eligible assistance unit if such payment should have been issued." 45 C.F.R. § 233.20(a)(13)(ii). Thus, assert appellees, the award of retroactive benefits is ancillary to the injunctive relief as prospective compliance with the federal statute and is therefore within the prospective compliance exception to the eleventh amendment bar. See Milliken v. Bradley, 433 U.S. 267 (1977).

The award of retroactive benefits sought here is distinguishable from the relief granted in Milliken. In Milliken, the Court ordered the defendants to implement remedial education programs as an adjunct to desegregating the Detroit public school system. The Supreme Court affirmed this relief, ruling that ordering the necessary expenditure of funds for the programs was within the federal courts' remedial powers since the expenditure was ancillary to the defendants' compliance in the future with the court's order to "conform their conduct to requirements of federal law." Id. at 289. In the case at bar the injunctive relief requires the defendants in the future to refrain from treating

personal injury awards as income. Compliance with this order obviously will require further expenditures of state funds to make assistance payments that would not otherwise have been made. The retroactive benefits sought, however, cannot be seen as an adjunct of the court ordered prospective relief, but could only constitute redress for past violations of federal law. As such the award would be indistinguishable from damages. Edelman squarely holds that such relief is outside the remedial power of the federal courts.

IV

We find no merit to plaintiffs' assertion that the district court erred in failing to order the mailing of individual explanatory notices of the judgment to all members of the plaintiff class. The district court ordered such notice to those members of the plaintiff class who could be ascertained from computer records maintained by the state defendants. As plaintiffs point out, the method of ascertaining ineligible recipients from the computer records would not reveal a substantial number of potential members of the class, particularly those who had been ineligible for a period of time prior to the present action but who had become eligible again

before July 1983. However, the district court also ordered publication of notice for four weeks in no less than four Virginia newspapers, including one in Richmond, and the posting of notice in all local offices of the Virginia Department of Social Services and the Virginia Department of Health.

The district court has wide discretion in fashioning the notice "best calculated to reach [the plaintiff class] without imposing an unreasonable burden on the state." Fabula v. Buck, 598 F.2d 869, 874 (4th Cir. 1979); see also Kimble v. Solomon, 599 F.2d 599 (4th Cir. 1979). The Supreme Court held in Quern v. Jordan, 440 U.S. 332 (1979), that requiring individual notice does not violate the eleventh amendment, but of course did not require such notice to class members in all cases. We find no abuse of discretion in the form of notice ordered here as the mailing of notice to identifiable class members was supplemented by posted notice and publication.

V

Lastly we find no merit to plaintiffs' contention that the district court erred in refusing to rule on their petition

for attorneys fees. Though appellate review of such an award or denial of award may best be done on appeal of the merits of the case, see Wright v. Jackson, 522 F.2d 955 (4th Cir. 1975), a district court may properly defer ruling pending ultimate resolution of the merits, hence determination of the prevailing party question. See Anderson v. Morris, 500 F. Supp. 1095 (D. Md. 1980); accord Dickerson v. Pritchard, 551 F. Supp. 306 (W.D.Ark.), aff'd, 706 F.2d 256 (8th Cir. 1983).

VI

For the foregoing reasons, we find no error in the judgment of the district court and affirm it in all respects.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ONA MAE REED, ET AL.,	)	CIVIL ACTION
	)	NO: 83-0493
PLAINTIFFS,	)	
	)	MEMORANDUM OPINION
v.	)	
	)	By James C. Turk
WILLIAM LUKHARD, ET AL.,	)	Chief U. S. District Judge
	)	
DEFENDANTS.	)	

PROCEDURAL POSTURE

This case is before the court on cross-motions for summary judgment. Plaintiffs Ona Mae Reed, Sallie Long, and Ruth Wilcher instituted this action on June 6, 1983 on their own behalf and on behalf of a proposed class of persons similarly situated. They seek injunctive and declaratory relief pursuant to 5 U.S.C. § 701-706 and 42 U.S.C. § 1983 in connection with the termination of benefits under § 602(a)(17) of the Aid to Families with Dependent Children Program

(AFDC).[1] Jurisdiction is predicated on 28 U.S.C. §§ 1331 and 1343.

After a hearing on plaintiffs' motion for a preliminary injunction this court entered an order on June 28, 1983 enjoining the defendants from applying the "lump sum" income rule of 45 C.F.R § 233.20(a)(3)(ii)(D) and ADC Manual § 305.4(c) to all three named plaintiffs.[2] Plaintiffs' request for a preliminary injunction as to the proposed class was, however, denied. Reed v. Lukhard 578 F. Supp. 40, 45 (W.D. Va. 1983). On August 1, 1983, the court ordered joinder of the Secretary of HHS as a necessary defendant. Thereafter, the court granted the motions of Opal Mae Cook and Stella King for intervention as individual plaintiffs. The matter is

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[1] The program is administered by the defendant Heckler, Secretary of the Department of Health and Human Services (HHS), at the federal level and by the defendant Lukhard as Commissioner of the Department of Social Services, at the state level. See § 63.1-86 et. seq., Code of Virginia (1950). Regulations governing the AFDC Program in Virginia are found in ADC Manual § 201 et. seq.

[2] 45 C.F.R. § 233.20(a)(3)(ii)(D) is the federal regulation implementing § 602(a)(17): § 305.4c is the state implementing regulation. See supra notes 3 & 4 for full text.

now ripe for summary judgment and for disposition of plaintiffs' motion for class certification.

STATEMENT OF FACTS

In 1981, Congress enacted the Omnibus Budget Reconciliation Act, Pub. L. 97-35 which amended the ADCF (sic.) Program, 42 U.S.C. § 601 et. seq. Section 602(a)(17) was added, which changed the treatment of lump sum payments received by AFDC applicants or recipients. Prior to enactment of this section, if an AFDC assistance unit received nonrecurring lump sum funds they were considered "income" in the month of receipt and the recipient was rendered ineligible for AFDC benefits. Once the funds were reduced to the state's standard of need and the recipient was otherwise eligible for AFDC, the assistance unit would be reinstated on the AFDC rolls. This new section requires state AFDC plans to provide for a period of ineligibility for AFDC recipients as follows:

> A State plan for aid and services to needy families with children must . . . (17) provide that if a person specified in [§ 602 8(a)(i) or (ii)] receives in any month an amount of income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member-

> (A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such a family, and (B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A).

§ 602(a)(8), which is incorporated by reference into § 602(a)(17) specifies:

> that, with respect to any month, in making the determination [of need] under [§ 602(a)(7)], the State agency --
>
> (i) shall disregard all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or a part-time student who is not a full-time employee attending a school, college or university, or a course of vocational or technical training designed to fit him for gainful employment;
>
> (ii) shall disregard from the earned income of any child or relative applying for or receiving aid to families with dependent children, or of any other individual (living in the same house as such relative and child) whose needs are taken into account

> in making such determination, the first $75 of the total of such earned income for such month (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month).

Pursuant to 45 C.F.R. § 233.20(a)(3)(ii)(D)[3], the federal

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[3] 45 C.F.R. § 233.20(a)(3)(ii)(D) provides as follows:

> Net income, except as provided in paragraph (a)(3)(xii) of this section, and resources available for current use shall be considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring lump sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes the AFDC assistance unit and any other individual whose lump sum income is counted in determining the period of ineligibility. A State may shorten the period of ineligibility where it finds that a life-threatening circumstance exists, and the nonrecurring income causing the period of ineligibility has been or will be expended in connection with the life-threatening circumstance. Further, until that time the nonrecurring income must have been used to meet essential needs and

defendant's regulation implementing § 602(a)(17), all recipients of nonrecurring lump sum income from any source are subject to the lump sum rule. The state defendant has adopted this interpretation in § 305.4c, Virginia ADC Manual[4].

Plaintiffs challenge the defendants' treatment of nonrecurring lump sum compensation for personal injuries on two grounds. First, they contend that the statutory language of § 602(a)(8) clearly excludes from the period of ineligibility specified in § 602(a)(17) those AFDC recipients who have no

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currently the assistance unit must have no other income or resources sufficient to meet the life-threatening circumstance.

4. Lump Sum Payments - The receipt or expected receipt (during the prospective cycle) of a nonrecurring lump sum payment such as the accumulation of benefits for a prior period, earned income tax credit refund, an insurance settlement, loans for current living expenses or from any other unearned source, must be prorated and reflected as income when the lump sum plus all other net countable income exceeds the standard of need (100 percent) in the month of receipt.
Monies received from THE SALE OR CONVERSION OF ANY REAL OR PERSONAL PROPERTY are not considered a lump sum. (See Section 303.3)
In situations where a child receives a lump sum, the option to exclude the child and the income is prohibited. Lump sum payments received by any member of the assistance unit must be used to establish continued eligibility or ineligibility of the unit.

earned income in the month of reciept of a personal injury award. Second, they maintain that since money received in compensation for personal injuries merely restores the injured party to the status quo, it does not constitute "income" within the meaning of the lump sum rule. According to plaintiffs, such funds must be treated as "resources," which would render the recipient ineligible for benefits only as long as total resources exceeded the state's standard of need for the family.[5] Under the defendants' current treatment as "income" subject to the lump sum rule, the period of ineligibility varies depending on the amount of the lump sum and continues for a time certain, regardless of when the funds are exhausted.

A full statement of the facts surrounding the three original plaintiffs' claims appears in this court's opinion of June 28, 1983 and will not be repeated here. See 578 F. Supp. at 41, 42. It is sufficient to note that of the five named plaintiffs, four received nonrecurring lump sum income from personal injury awards which resulted in the establishment of

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[5] See 42 U.S.C. § 602(a)(7)(B); 45 C.F.R. § 233.20(a)(3)(i)(B); ADC Manual § 303.2(E).

a period of ineligibility for AFDC benefits. The remaining plaintiff Reed, received a worker's compensation award and was similarly ineligible for AFDC benefits. For all plaintiffs, the lump sums were allegedly exhausted before the expiration of their respective periods of ineligibililty.

Before proceeding to a disposition of the summary judgment issues the court will address plaintiffs' motion for class certification.

CLASS CERTIFICATION

Plaintiffs contend that since defendants' policies are in effect throughout the Commonwealth, class relief is the only appropriate vehicle for vindication of their rights. They seek a classwide injunction enjoining defendants from applying the lump sum rule to AFDC recipients without earned income and to recipients of personal injury awards, as well as a classwide declaration of plaintiffs' rights to reimbursement of benefits improperly denied beginning October 1, 1981. Plaintiffs further assert that should the court determine that their AFDC benefits were unlawfully terminated or reduced after October 1, 1981, appropriate relief would include issuance of a notice to all class members informing them of the court's

decision and advising them of any state administrative procedures available for reimbursement of benefits improperly denied.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, a class may be certified by the court if it meets the four criteria of subsection (a) which requires that:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition, at least one of the conditions set forth in subsection (b) must be fulfilled in order to maintain a class action. Plaintiffs invoke subsection (b)(2) as applicable to their case. That section provides for classwide relief if:

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

For the reasons stated, the court believes that classwide relief is necessary and appropriate, but that the class, as drawn by the plaintiffs, is overinclusive. Therefore, the court

will certify the following class of individuals in this case:

> All those persons in Virginia whose benefits, since 10-1-81, have been, continue to be, or will be denied, reduced, or terminated solely because of the "lump-sum" policies set out at 45 C.F.R.§ 233.20(a)(3)(ii)(D) and at ADC Manual § 305.4c whose "lump-sum" was or will be derived from compensation for personal injuries.

Neither the plaintiffs nor the state defendants have been able to determine the exact number of cases where the denial or termination of AFDC benefits was based solely on the receipt of personal injury awards or settlements. The record indicates, however, that from October 1, 1981 through August 1983 at least 669 AFDC cases were terminated and 100 applications for benefits were denied because of the lump sum rule. See Defendants' Responses to Interrogatories. The record also reflects that approximately 231 AFDC cases are terminated annually in Virginia because of lump sum insurance settlements from insurance policies not owned by the AFDC assistance unit. See Plaintiffs' Reply Brief In Response To Defendants' Briefs In Opposition to Plaintiffs' Motion For Class Certification, Exh. 1. While the plaintiffs have the burden of demonstrating the existence of a class whose bounds are precisely drawn, Cape Henry Bird Club v.

Laird, 484 F.2d 453 (4th Cir. 1973), they are not required to specify the exact number of potential class members. Marshall v. Electric Hose and Rubber Co., 41 F.R.D. 377, 384 (S.D. N.Y. 1966). Moreover, "where the plaintiff has demonstrated that the class of persons he or she wishes to represent exists, that they are not specifically identifiable supports rather than bars the bringing of a class action, because joinder is impracticable." Doe v. Charleston Area Medical Center, Inc., 529 F.2d. 638, 645 (4th Cir. 1976). Joinder of all members of the class is impracticable because of the present administrative difficulty in identifying AFDC recipients whose benefits have been denied or terminated because of the lump sum rule. Thus, the record in this case contains ample evidence that the proposed class satisfies the requirement of numerosity.

With regard to the remaining requirements of Rule 23, it is clear that common questions of law or fact exist with respect to the class as drawn by the court: the identical statutory rights of all members of the class have been allegedly violated by the defendants' "lump-sum" policies. Each of the five plaintiff representatives received the lump sum funds

as compensation for personal injuries suffered either by herself or by her children making their claims typical of the claims of the class. Each of the five plaintiff representatives has suffered loss of AFDC benefits. This personal stake in the outcome of the case ensures zealous pursuit of the action such that the rights of the class are certain to be protected. Rodriguez v. Swank, 318 F. Supp. 289, 294 (N.D. Ill. 1970), aff'd 403 U.S. 901 (1971). The court finds, therefore, that the four requirements of Rule 23(a) have been satisfied. Furthermore, it is clear that the defendants have acted on grounds generally applicable to the class such that 23(b)(2) is also satisfied.

The defendants contend that even if Rule 23 is satisfied, the court should not allow maintenance of the case as a class action because it is unnecessary to do so. They argue that the court should deny class certification because relief can be granted in such a way as to benefit not only the claimants, but also all other persons subject to the policies under attack. Sanford v. R.L. Coleman Realty Co., Inc., 573 F.2d 173 (4th Cir. 1978). It is the defendants' position that if the requested declaratory and injunctive relief is entered in favor

of the individual plaintiffs the state would then offer the relief granted to any eligible persons in the proposed class. As a result, no plaintiff class is needed. The court does not agree.

While injunctive and declaratory relief will often inure to the benefit of all members of a proposed class without class certification, such is not the case here. The class as defined by the court includes individuals who have been denied eligibility or have been terminated from the AFDC Program because of defendants' policies. A declaration that those policies are unlawful, as well as an injunction against future application of the lump sum rule, will afford no relief to individuals who have been denied AFDC in the past unless they are notified of the court's decision that they were improperly denied benefits. Without such notification, it is unlikely that those individuals would be informed that they could seek retroactive AFDC benefits either through state administrative procedures or through state courts.[6]

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[6]. No monetary relief, such as retroactive AFDC benefits, can be awarded by this court pursuant to the eleventh amendment. Edelman v. Jordan, 415 U.S. 651 (1974).

The United States Supreme Court has addressed the necessity of this type of notice in Quern v. Jordan, 440 U.S. 332 (1979). The Court held that the eleventh amendment did not bar a federal court from ordering a state to advise class members of the outcome of the case and of the availability of state administrative procedures. In a similar situation[7], this court previously found that explanatory notice of the type requested here was appropriate and necessary. Quoting Quern, the court reasoned that:

> such notice "in effect simply informs class members that their federal suit is at an end, that the federal court can provide them with no further relief, and that there are existing state administrative procedures which they may wish to pursue." Whether class members would have to pursue administrative remedies, file a court action, or seek legislative assistance is not relevant to the propriety of notifying plaintiffs of their . . . rights. These are matters of state law which contain "numerous missing links, which can be supplied, if at all, only by the state and members of the plaintiff class and not by a federal court."

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7. Randall v. Lukhard involved Virginia's transfer of assets rule, which disqualified medicaid applicants or recipients who had transferred property to other persons for less than fair market value. In a class action, plaintiffs sought declaratory and injunctive relief.

Randall v. Lukhard, 536 F. Supp. 723, 731 (W.D. Va. 1982), aff'd in part and rev'd in part, 709 F.2d 257 (4th Cir. 1983) (Citations omitted.)

Accordingly, the plaintiffs' motion for class certification, as modified by the court, will be granted.[8]

THE LUMP SUM RULE AS APPLIED TO AFDC RECIPIENTS WITHOUT EARNED INCOME

Plaintiffs' first challenge to the defendants' treatment of lump sum compensation for personal injuries is one of statutory construction. They assert that the statutory provision of 42 U.S.C. § 602(a)(17) plainly limits the rule to

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8. The defendants' cite a number of cases for the proposition that class certification is not necessary in this case. See Memorandum in Support of Federal Defendant's Motion for Summary Judgment and in Opposition to Plaintiffs's Motion For Summary Judgment And For Class Certification. Unlike the instant case, however, these cases involve situations where injunctive and declaratory relief would provide full relief to all members of a proposed class without class certification. For example, in Sandford v. R.L. Coleman Realty Co., Inc., 573 F.2d 173 (4th Cir. 1978), the court of appeals decided that the need for class certification would disappear upon entry of an injunction "in favor of the plaintiff . . . and any other blacks who, in the future, may be denied equal access to housing under the defendants' control." Id. at 179. The plaintiffs in Sandford were seeking prevention of future wrong to a class members, while plaintiffs here seek not only a correction of future wrong, but also a correction of past wrongs for individuals already denied benefits.

families with earned income at the time they received their lump sum. In support of this claim, plaintiffs point to the relationship between § 602(a)(17) and § 602(a)(8)(A)(i) and (ii). More specifically, plaintiffs posit that § 602(a)(17) sets out the lump sum rule and then limits its application to "a person specified in paragraph 8(a)(i) or (ii); that the persons so specified are only those with earned income; and therefore, the lump sum rule applies only to those AFDC recipients with earned income. The defendants argue that 8(a)(i) and (ii) merely describe categories of AFDC recipients covered by the lump sum rule, and then specifies treatment for any earned income which they may have. Both plaintiffs and defendants maintain that the statute, by its literal terms, clearly supports their respective positions. The court previously addressed this issue in its opinion on plaintiffs' motion for a preliminary injunction. The court found then that:

> Plaintiffs' position . . . is nothing but wishful thinking. If anything is to be decided from reading those two provisions in isolation, it would have to be in favor of the defendants' contentions: § 602(a)(8)(A)(i) and (ii), without question, set forth certain categories of recipients, and then provide that certain portions of the "earned income" of those recipients be disregarded in making eligibility and need determinations under § 602(a)(7). It does not

> necessarily follow that the category of recipients set forth in § 602(a)(8)(A)(i) and (ii), as incorporated by § 602(a)(17), includes only those having earned income; to argue that it does suggest[s] an uncritical reading of the provisions.

578 F. Supp. at 43-44.

Mindful of the liberal standard for granting a preliminary injunction,[9] the court cited Sweeney v. Affleck,[10] and Faught v. Heckler,[11] as demonstrating that plaintiffs had a colorable chance of prevailing on the merits sufficient to warrant the imposition of preliminary injunctive relief upon defendants. 578 F. Supp. at 44 (citations omitted). In Sweeney the district court granted summary judgment for a class which consisted of former AFDC recipients whose benefits were terminated for a specified period of time following receipt of

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[9]. In determining whether to issue a preliminary injunction, the court must "balance the hardships" by considering the "flexible interplay" among four factors: "the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied; the likelihood of harm to the defendant if the requested relief is granted; the likelihood that plaintiff will succeed on the merits; and the public interest." Federal Leasing v. Underwriters at Lloyd's, 650 F.2d 495, 499 (4th Cir. 1981).

[10]. 560 F. Supp. 1118 (D.R.I. 1983).

[11]. No. 83-66-A (S.D. Iowa April 5, 1983).

lump sum income in a month when they had no earned income. The court found that the statutory language, the legislative history, and the purpose of the AFDC program supported plaintiffs' restrictive reading of the scope of the lump-sum rule. 560 F. Supp. 1118. The court in Faught likewise granted preliminary relief to plaintiffs. See 577 F. Supp. 1180 at 1184. These cases no longer lend support to plaintiffs' position here on summary judgment.

On April 27, 1984, the Court of Appeals for the First Circuit reversed the district court in Sweeney.[12] After an extensive analysis of the relevant statutory language, the court of appeals held that "the . . . language itself could support either [plaintiff's or defendant's] construction, but not without some strain." 732 F.2d at 1027. The court found it necessary, therefore, to review the legislative history and administrative interpretations of the statute. The court then concluded that

> [t]he legislative history of 42 U.S.C. § 602(a)(17) is as clear as its language is ambiguous. Committee reports reveal that Congress had two

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12. Sweeney v. Murray, 732 F.2d 1022, 1030 (1st Cir. 1984).

> major motives in amending subsection (a)(17): to promote responsible budgeting of lump-sum income by all AFDC families and to reduce AFDC disbursements by a specified amount based on calculations that had assumed application of the lump-sum rule to all AFDC families, not only to those AFDC families with earned income.

In light of the decision in Sweeney, the court is likewise of the opinion that the language used by Congress in enacting the lump-sum rule at 42 U.S.C. § 602(a)(17) is ambiguous. For the reasons given in Sweeney, the court concludes that the defendants' interpretation that the statute applies to AFDC recipients regardless of whether they have earned income is consistent with the legislative history and will not be disturbed.[13] The court does not agree, however, with defendants' position that the statute is inclusive of lump sum compensation for personal injuries.

LUMP SUM COMPENSATION FOR PERSONAL INJURIES AS "INCOME"

Plaintiffs maintain that the lump sum rule should not be applied to awards for personal injuries because the term

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13. See also Callejas v. McMahon, No. C-83-3136 EFL (N.D. Ca. Sept. 2, 1983) at 4-5; accord; Faught v. Heckler, 577 F. Supp. 1180 (S.D. Iowa 1983); Betson v. Cohen, 578 F. Supp. 154 (E.D. La. 1983).

"income," as used in the statute, is not inclusive of awards which merely compensate plaintiffs for losses suffered. Plaintiffs argue that by receiving monetary compensation for personal injuries the recipient has merely exchanged one resource, a whole and healthy body, for another. There has been no gain, thus no income. They point to defendants' own definition of "resource" in support of this position. That is, Virginia's ADC regulations on "resources" provide that the sale or conversion of real or personal property is not counted as lump sum income. ADC Manual §§ 303.3 and 305.4C. These state regulations track the federal policy of treating as a resource the conversion of a non-liquid asset into cash. 47 Fed. Reg. No. 25 at 5657. Plaintiffs complain that the defendants' failure to similarly treat compensation for personal injuries leads to the following unconscionable results:

> Ex. 1. Ms. H and her two children live in Roanoke and receive $255 AFDC each month. If Ms. H's home burns down and she receives a $20,000 insurance award, she may spend the insurance proceeds on anything she wants and as quickly as she wishes. She can reestablish her AFDC eligibility as soon as her countable resources fall below $600.
> However, if Ms. H's body is burned in a fire, and she receives $20,000 to compensate her loss, the money is treated as lump sum income. Ms. H and her children are disqualified from the

> AFDC program for almost 6 years. [20,000 divided by 283 (the standard of need) = 70.67 months], even if the money is expended before that period ends.
>
> Ex. 2. Ms. H's youngest child, Johnnny, is hit by a car and injured. Ms. H's insurance company pays Johnny for $1000 for his injuries. The family can qualify for AFDC when their available resources fall below $600. On the other hand, if the driver's insurance company pays Johnny for his injuries, the money is treated as lump sum income and the family is disqualified from AFDC for 3 months and their benefits in the 4th month are reduced to $104. ($1000 divided by 283 = 3.5 months. $151 of the lump sum remains in the 4th month and is subtracted from the $255 payment.)

Plfs. Memo in Support of Motion for Summary Judgment at 27. Plaintiffs submit that it is irrational to afford more favorable treatment to the damage of a material resource, such as a car or a home than that afforded the damage to one's body and that Congress did not intend such an application of the lump sum rule. Defendants take the position that Virginia's treatment of personal injury awards is not inconsistent with any AFDC statutory or regulatory provision and urge the court to uphold their interpretation of the statute as a reasonable exercise of exceutive discretion.

The Standard of Review

The applicable standard of review, 5 U.S.C. § 706(2), the Administrative Procedure Act, provides that

> the reviewing court shall set aside agency action, findings, and conclusions found to be (A) arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law . . . .

Camp v. Pitts, 411 U.S. 138 at 142 (1973).

This standard is a highly deferential one, presuming agency action to be valid. Citizens to Preserve Overton Park v. Volpe, 410 U.S. 402 (1971); Batterton v. Francis, 432 U.S. 416 (1977). While the court is not permitted to substitute its judgment for that of the agency, this does not mean that the court must rubber-stamp the agency's interpretation as correct. To do so would render the review process superfluous. Ethyl Corp. v. Environmental Protection Agency, 514 F.2d 34 (D.C. Cir. 1976). Therefore, when reviewing the propriety of the defendants' interpretation of the lump sum rule the court will reject the regulatory scheme only if it finds that it lacks a reasonable basis. Connor v. Finch, 314 F. Supp. 364, 369 (N.D. Ill. 1970); Dandridge v. Williams, 397 U.S. 471 (1970). Mindful of this limited review, and for the reasons stated, the court concludes that it is unreasonable to

apply the lump sum rule to nonrecurrng lump sum compensation for personal injuries. The language of § 602(a)(17) clearly applies the extended disqualification provision of the lump sum rule to "income" and not to "resources:"

> When an ADC recipient receives in any month an amount of income which, together with all other income . . . exceeds the state's standard of need . . . [the family is ineligible for further aid for a period equal to the number of months computed by dividing the lump sum, and other income, by the state's monthly ADC standard of need]. (emphasis supplied).

The federal implementing regulation in question also applies specifically to "income."[14] "Income" is not, however, expressly defined in the statute or in the regulation. The legislative history accompanying the lump sum amendment also fails to define the term. It is, however, instructive to note that in considering the appropriate statutory language the Senate Finance Committee commented as follows:

> Under present law, any payments that meet the definition of income (e.g., retroactive social security benefits) are counted as income in the month of receipt and any of the payment that is not spent in that month is usually considered a resource in the months thereafter.
> The committee amendment would require that

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14. See supra note 3 at 4.

> large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program. If such income exceeds the standard of need, the household would be ineligible for aid.

1981 U.S. Code Cong. & Ad. News 693 at 702.

In the court's opinion, this language strongly supports plaintiffs' position that Congress did not intend to include compensation for personal injuries in the lump sum rule. The explicit reference to "payments that meet the definition of income" compels the conclusion that Congress contemplated the existence of lump sum payments which do not constitute "income." Likewise, the language which links "large payments together with other income" reinforces this conclusion. To say that Congress meant to define all lump sums as "income" would fly in the face of the inferences which are reasonably drawn from these express references and would render them superfluous. The court can find nothing in the record to warrant such a finding. Furthermore, it is a fundamental canon of statutory construction that where Congress uses terms that have accumulated settled meaning under either equity or common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorpo-

rate the established meaning of the term. NLRB v. Amax Coal Co., 453 U.S. 322 (1981); accord; Perrin v. United States, 444 U.S. 37, 42 (1979); Malat v. Riddell, 383 U.S. 569 (1966); Richard v. United States, 369 U.S. 1 (1962). The court is of the opinion that the established, common meaning of "income" does not encompass compensation for personal injuries.

The logical starting point for the common, established meaning of "income" is the dictionary:

> Income - the amount of money or its equivalent received during a period of time in exchange for labor or services, from the sale of goods or property, or as profit from financial investments.

American Heritage Dictionary, 2d Ed. Black's Law Dictionary, 5th Ed. defines income as

> "the return of money from one's business, labor, or capital invested; gains, profits, salary, wages, etc. . . . The true increase in amount of wealth which comes to a person during a stated period of time."

These definitions of "income" contemplate a measurable gain to the individual. Compensation for personal injuries, however, functions to restore the recipient to the status she or he enjoyed prior to injury:

> It is a recognized and established principle of the law of torts, founded in sound reason, that the compensation awarded to one who is injured, either in person or property, by the wrongful act of another, shall at least be equal to, and should in all cases be commensurate with, the loss or injury sustained.

22 Am. Jur.2d, Damages § 85 note 3 (Citations omitted). Since such payments are considered to make the individual whole again, the element of measurable gain is lacking.

By way of analogy, the pronouncements of the Supreme Court of the United States on the meaning of "income" in the context of the Internal Revenue Code are also instructive here. In 1919 the Court reiterated what it believed was "income:"

> Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets....

Eisner v. Macomber, 252 U.S. 189 at 207, quoting Stratton's Independence v. Howbert, 231 U.S. 399, 415, and Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185. Later, the Court clarified the basis for this definition: "this court has consistently refused to enter into the refinements of lexicographers or economists and has approved . . . what it believed to be the

commonly understood meaning of the term ["income"] which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution. Merchant's Loan and Trust Company v. Smietanka, 255 U.S. 509, 519 (1921); accord, U.S. v. Stewart, 311 U.S 60, 63 (1940). Finally, when determining that punitive damages must be included as "gross income" for tax purposes the Court held:

> [t]he long history of departmental rulings holding personal injury recoveries nontaxable on the theory that they roughly correspond to a return of capital cannot support exemption of punitive damages following injury to property. Damages for personal injury are by definition compensatory only. Punitive damages, on the other hand, cannot be considered a restoration of capital for taxation purposes.

Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 432 n. 8 (1954). The Internal Revenue Code also excludes from gross income compensation for personal injuries or sickness. 26 U.S.C. § 104.[15]

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15. Defendants cite the case of Betson v. Cohen, 578 F. Supp. 154 (E.D. La. 1983) for the proposition that since personal injury awards are not expressly excluded from application of the statute or the regulation they must be considered as a lump sum. For the reasons stated, the court cannot agree with the conclusions of the court in Betson. The court held that the Internal Revenue Code s exclusion of personal injury awards from gross income did not support the

In light of the aforementioned treatment of personal injury awards, the court concludes that the settled meaning of "income" as expressed by the Supreme Court and as understood in common usage has not been altered by the AFDC statute. Congress has given the court no reason to apply a more particularized meaning of the word in the AFDC context.[16] The court is of the opinion, therefore, that it is

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claim that those awards are not income for purposes of the AFDC statute. Id. at 159. The court stated:

> That exclusion . . . is expressly established by statute at 26 U.S.C. § 104(a)(2). Were such a provision not made, such awards could be considered income under the Internal Revenue Code general provision of income, 26 U.S.C. § 61(a). See Roemer v. Commissioner of Internal Revenue, 716 F.2d 693, 696, n. 2 (9th Cir 1983).("Since there is no tax basis in a person s health and other personal interests, money received as compensation for an injury to those interests might be considered a realized accession to wealth" absent the exclusion.) The plaintiffs' argument fails in light of these considerations.

578 F. Supp. at 159. (Emphasis supplied.) The court' finds this reasoning unpersuasive in light of the Supreme Court's pronouncement in Glenshaw Glass, supra. Furthermore, the Betson court's reliance on the statutory exclusion of personal injury awards ignores the definition of "income" established by common usage.

16. Except to the extent to which the court has discussed governmental provisions dealing with "income" and personal injury awards, the court finds it unnecessary to consider plaintiffs' remaining contention regarding administrative

irrational to treat a damaged car or home more favorably than a damaged body. Consequently, the defendants' interpretation of the lump sum rule as inclusive of personal injury awards is unreasonable and, as applied to such awards, cannot stand. Summary Judgment is hereby granted for plaintiffs on their second claim for relief. The case shall be set by petition of the parties for further proceedings to determine the appropriate relief to be granted.

An appropriate order shall be entered accordingly.

Dated: This 26th day of July, 1984.

(Signed: James C. Turk)
Chief United States District
Judge

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characterizations of compensation for personal injuries.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ONA MAE REED, ET AL.,	)	CIVIL ACTION
	)	NO. 83-0493
PLAINTIFFS,	)	
	)	ORDER
v.	)	
	)	By: James C. Turk
WILLIAM LUKHARD, ET AL.,	)	Chief U. S. District Judge
	)	
DEFENDANTS.	)	

In accordance with the Memorandum Opinion filed this day, it is

ADJUDGED and ORDERED

that Plaintiffs' Motion for Summary Judgment be, and hereby is, Granted on the issue of the definition of "income" for purposes of the AFDC statute. Defendants' Motion for Summary Judgment is hereby Denied.

The parties are Ordered to contact the court to set a hearing on the appropriate relief to be granted.

ENTER: This 26th of July, 1984.

(Signed: James C. Turk)
Chief United States District Judge

Final Judgment and Order dated October 3, 1984

Following a hearing held September 25, 1984, on the issue of relief, it is hereby

ADJUDGED AND ORDERED

as follows:

1. The Secretary of Health and Human Services (the federal defendant) is dismissed as a party defendant with the understanding that the federal defendant will take no action which would interfere with the state defendant's compliance with this order.

2. Defendant Lukhard's (state defendant) Motion for Reconsideration is DENIED.

3. Defendant Lukhard, his agents, employees, successors, assigns, and all other persons acting in concert and participation with him, are hereby enjoined from counting lump-sum compensation derived from personal injuries as income, rather than as a resource, and are hereby enjoined from denying, reducing, or terminating ADC benefits to the members of the Plaintiff class by application of the "lump-sum" policies set out at 45 C.F.R. § 233.20(a)(3)(ii)(D) and ADC MANUAL § 305.4c.

4. Defendant Lukhard, his agents, employees, successors, or assigns, will cause current ADC benefits to be paid to the named plaintiffs in this action.

5. Defendant Lukhard, his agents, employees, successors, or assigns, will cause current ADC benefits to be paid to those class members who should presently be receiving said benefits but for the lump sum policies regarding personal injury awards as set out at 45 C.F.R. § 233.20(a)(3)(ii)(D) and ADC MANUAL § 305.4c.

6. Defendant Lukhard will cause individual notice to be sent by mailing to the last known address of those persons listed on the computer "snapshots" (one such "snapshot" taken in July, 1983, and one to be taken within fifteen (15) days of the entry of this order) whose benefits were denied or terminated due to personal injury awards. Said notice shall be approved by the court prior to mailing.

7. Defendant Lukhard will cause notice of this decision to be published once a week for four (4) weeks in no fewer than four (4) regional newspapers in Virginia, one of which must be the Richmond newspaper.

8. Defendant Lukhard will cause notice of this decision to be posted in each local office of the Virginia Department of Social Services and of the Virginia Department of Health. Said notice shall remain posted for a period of at least sixty (60) days.

9. Plaintiff's request for retroactive benefits under 42 U.S.C. § 602(a)(22) is DENIED. See Pennhurst State School and Hospital v. Halderman, __ U.S. __, 104 S.Ct. 900 (1984) and Buckhanon v. Percy, 708 F.2d 1209 (7th Cir. 1983).

10. Execution of items 3, 5, 6, 7, and 8 of this order shall be stayed pending any appeal in this matter. See Fed. R. Civ. P. 62.

11. As the defendant is a state agency, no bond will be required for the appeal.

The Clerk of Court is directed to strike this case from this court's active docket and to send certified copies of this final order to all counsel of record.

ENTER: This 3rd day of October, 1984.

(Signed) James C. Turk
Chief U.S. District Judge